

Board Proposed Amendments to Montana Code Annotated

75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Aboveground storage tank" means a horizontal or vertical tank at a fixed location used to contain an accumulation of petroleum or petroleum product that is 90% or more above the soil surface without backfill.

(23) "Plume" means residual, leachate, and/or dissolved phase petroleum in the environment.

75-11-307. Reimbursement for expenses caused by release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund under 75-11-308(1)(b)(i) and 75-11-308(1)(b)(ii) that are discovered and reported on or after April 13, 1989, July 1, 2009 ~~storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes,~~ the board shall reimburse an owner or operator for: (i) 50% of the first \$150,000 of eligible costs and ~~100~~95% of subsequent eligible costs, up to a maximum total reimbursement of \$927,500~~495,000~~:

~~— (A) for single-walled tank system releases; and~~

~~— (B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or~~

~~— (ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and~~

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after ~~April 13, 1989, July 1, 2009~~ the board shall reimburse an owner or operator for: (i) 50% of the first ~~\$35,000~~ \$50,000 of eligible costs plus 95% of and 100 % of subsequent eligible costs, up to a maximum total reimbursement of ~~\$982,500~~ \$215,000.

~~(A) for single-walled tank system releases; and~~

~~(B) for double-walled tank system releases for which the release date was prior to October 1, 1993 or;~~

~~(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.~~

(c) An owner or operator of a site with more than one plume from separate petroleum storage tanks eligible for reimbursement from the petroleum tank release cleanup fund under 75-11-307(4)(a) and 75-11-307(4)(b), MCA and whose plumes have commingled shall be reimbursed for eligible costs as specified in 75-11-307(4)(a), MCA.

(5) Fund eligible costs paid by an insurer to an owner or operator filing a claim against any applicable insurance coverage shall be credited 100% to the owner or operators eligible fund costs except that any reimbursement made by the board pursuant to subsection (4) shall be final.

(6) Fund reimbursement will not be made until all applicable insurance coverage has been exhausted.

~~(5-7)~~ If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the release occurred from:

(i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the time that the release was discovered;

(ii) an aboveground storage tank, as defined in 75-11-302, that has been inspected by an inspector certified by the state fire marshal office and found to be in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from an aboveground storage tank at the time that the release was discovered; or

(iii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum release from a petroleum storage tank at the time that the release was discovered; or

(iv) an underground storage tank, as defined in 75-11-503, that the board determines was unknown to both the property owner and the department prior to its discovery, if the owner applies to the department for a closure permit in accordance with 75-11-212 within 90 days of the date upon which the owner first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before the permit expires;

(c) the release was an accidental release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, except for a

tank that was operated by a lessee of a railroad in the course of nonrailroad operations;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another;

75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect the public health and safety and the environment.

(b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii iv) and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective action requirements.

(d) (i) The department shall review the corrective action plan and forward a copy to a local government office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(e) The department shall notify the owner or operator of its approval of a corrective action plan and shall promptly submit a copy of the approved corrective action plan to the board.

(f) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and

rules.

(g) (i) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan.

(iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and necessary, the board may request comment from the department and the owner or operator.

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board.

(h) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

~~(i) In addition to the documentation in subsections (1)(g) and (1)(h), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:~~

~~—(i) the date that the release was discovered;~~

~~—(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and~~

~~—(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.~~

(2) If an owner or operator is issued an administrative order or are subject to judicial action for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order or action must be suspended. Upon a written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(g) and (1)(h), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination by the board that the owner or operator has not complied with this section or

rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(4) If an owner or operator disagrees with a board determination under subsection (3), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee.

75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(c) and (3)(d). Administrative costs under subsections (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) As provided in 75-11-318, the fund may be used only:

(a) to administer this part, including payment of board expenses associated with administration;

~~(b) to pay the actual and necessary department expenses associated with administration;~~

(eb) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(dc) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year.

75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) ~~1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;~~

(b) ~~0.75~~ 1 cent for each gallon of gasoline distributed after July 1, ~~1991~~ 2009;

(e b) ~~0.75~~ 1 cent for each gallon of aviation gasoline distributed after July 1, ~~1993~~ 2009;

(d c) ~~0.75~~ 1 cent for each gallon of special fuel distributed after July 1, ~~1993~~ 2009; and

(e d) ~~0.75~~ 1 cent for each gallon of heating oil distributed after July 1, ~~1993~~ 2009.

(2) Gasoline, aviation gasoline, and special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 10 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 6 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 10 million.